

1979 WL 42729 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 2, 1979

***1 SUBJECT: Property Tax—Homestead Exemption—Non-Qualification of Life Estate Created by Deed**

When the owner, by deed, reserves a life estate, the same will not satisfy the ownership requirements of the homestead exemption.

Honorable Lester R. 'Skip' Waddell
Auditor
Florence County

QUESTION:

A person was devised the homestead in fee, later such person conveys the same reserving, however, a life estate; will the life estate satisfy the ownership requirements for the homestead exemption?

STATUTE INVOLVED:

[Sections 12-37-250](#) and [12-37-260 of the 1976 Code](#) of Laws.

DISCUSSION:

The homestead exemption is granted by [Section 12-37-250](#) to certain persons that are either sixty-five years of age or older, totally and permanently disabled or totally blind. One condition for the exemption is that such person 'hold complete fee simple title or a life estate to the dwelling place.' The last paragraph of the statute is that:

'The provisions of this section shall apply to life estates created by will and also to life estates otherwise created which were in effect on or before December 31, 1971.'

[Section 12-37-260](#) contains similar language and the life estate here involved did not exist on December 31, 1971, therefore, the same does not satisfy the ownership requirements of the statute. The fact that the complete fee and the life estate are separate estates is evidenced by the language of the statute above quoted. Additionally, [Section 12-27-610](#) further recognizes the two estates by providing that the respective owners thereof be liable for taxes on the property.

It is likewise accepted that a life estate can be reserved by conveyance of the grantor.

'The rule is well settled in the modern law that if the instrument is not testamentary in character, and passes a present interest although enjoyment of the fee is postponed, a grantor may, in a conveyance, either specifically or by language which by construction brings about the same result, reserve to himself a life estate in property in which the fee is granted.' 28 Am. Jur. 2d, § 67.

Here, there was no life estate in existence until the deed was executed, therefore, the life estate was not created by will. The conclusion here stated is fortified by the general rule that statutes granting exemption from taxation are subject to strict

construction with doubt resolved against the exemption and in favor of the tax. [Chronicle Publishers, Inc. v. South Carolina Tax Commission](#), 244 S. C. 192, 136 S.E. 2d, 261.

CONCLUSION:

When the owner, by deed, reserves a life estate, the same will not satisfy the ownership requirements of the homestead exemption.

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